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Arcuri Remarks at EPA Chesapeake Bay TMDL Forum

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BINGHAMTON, NY – On Oct. 27, 2010 U.S. Rep. Michael Arcuri (NY-24) attended the Environmental Protection Agency's (EPA) Public Meeting on the draft Chesapeake Bay Total Maximum Daily Load (TMDL) at the Binghamton Regency Hotel in Binghamton, NY.

The draft TMDL, also known as the Chesapeake Bay "Pollution Diet," would set limits on the amount of nitrogen, phosphorus and sediment pollution discharged into the Chesapeake Bay and its tributaries by various pollution sources. The Bay Watershed encompasses 6 states and the District of Columbia with New York's portion including all or parts of Allegany, Broome, Cayuga, Chemung, Chenango, Cortland, Delaware, Herkimer, Livingston, Madison, Montgomery, Oneida, Onondaga, Ontario, Otsego, Schoharie, Schuyler, Steuben, Tioga, Tompkins, and Yates counties.

Recently, Arcuri joined several New York Delegation colleagues in sending a letter to EPA Administrator Lisa Jackson to express their strong concerns over the requirements that would be placed on New York by the draft TMDL released on September 24, 2010.

In an effort to adhere to the strict speaking time limit, Arcuri requested that his full remarks be submitted for the official record. Below is a copy of those remarks:

"I thank you for the opportunity to appear today and voice my concerns. Thank you for choosing to hold two of the public meetings on the draft Chesapeake Bay Total Maximum Daily Load (TMDL) in New York. New York is an important partner in achieving a healthy and restored Chesapeake Bay. Approximately ten percent of the total Bay watershed lies in New York, including its northern-most headwaters, the Susquehanna and Chemung River systems."

"I commend EPA for taking serious actions to restore the health and vitality of the Chesapeake Bay and I want to assure you that I strongly support this ultimate goal. The Bay and its tributaries are national treasures that are suffering from desperately poor conditions and in need of significant restoration and protection. The long-term health of the Chesapeake Bay ecosystem could not be more important.

"It is important that we learn from the lessons of the past, so that the failures of the past are not repeated by the current effort. When D.C., Maryland, Virginia, and Pennsylvania signed the Chesapeake 2000 Agreement, they committed 'to nurture and sustain a Chesapeake Bay Watershed Partnership and to achieve the goals set forth' in that agreement by 2010. Ten years later, that deadline has arrived and the vast majority of pollution reduction goals contained in the Chesapeake 2000 Agreement have not been met. Some will say that Chesapeake 2000 lacked a strong means of enforcement – which the TMDL arguably addresses. But enforcement alone is not enough. We cannot hope to simply punish our way to a cleaner Bay. If there is no way for a particular partner to meet its required reductions, no amount of enforcement will achieve those reductions.

"For the final TMDL is to succeed in achieving actual restoration of the Bay, all watershed jurisdiction partners must be fully invested. Chesapeake 2000 acknowledged this, and stated that 'Without such a partnership, future challenges will not be met. With it, the restoration and protection of the Chesapeake Bay will be ensured for generations to come.' In order for that to happen, the TMDL load allocations must not only be theoretically attainable for all jurisdictions, but they must appear equitable and just to all parties. The allocations contained in the draft TMDL issued by EPA are neither. They place unattainable pollution reductions on New York and other headwater states and, if finalized, threaten the economic well-being of the communities

within New York's Bay Watershed and the agricultural industry on which our entire state relies.

"New York has made significant improvements in water quality since the mid-1980s. If the entire Chesapeake Bay watershed had the same water quality that the New York portion of the watershed currently has, the Bay would not be impaired. Our state's water quality, in terms of per acre loads of nitrogen and phosphorous, far surpasses that of any other jurisdiction within the Bay watershed – both when measured at the edge of the stream in New York and as load actually delivered to the Bay. New York's current edge of stream load is 6.06 pounds of nitrogen and less than half a pound of phosphorous per acre per year.

"Two factors have contributed to New York's superior water quality. First, New York's environmental regulations are more stringent than the federal minimum requirements. Unlike EPA's national minimum standards, New York's regulation of stormwater discharges from construction activity requires a broad range of post-construction water quality and quantity controls on nearly all sites over one acre.

"Secondly, on the agricultural side, many NY farmers have voluntarily participated in non-mandatory programs, such as using rotational grazing; adopting precision feeding practices; and implementing nutrient management plans.

"Instead of penalizing New York for its past successes, I would strongly encourage EPA to use New York's success with these voluntary agricultural programs as a model for other states.

"The draft TMDL allocations are patently unfair to headwater states in general and New York in particular. It should come as no surprise that of the seven watershed jurisdiction partners (the six states plus the District of Columbia), none of the draft Phase I Watershed Implementation Plans (WIPs) submitted by non-tidal jurisdictions could meet EPA's nitrogen and phosphorus allocations. The deck, after all, had been stacked in favor of the tidal jurisdictions. This result might have been avoided, had EPA retained the principle for allocating load caps to jurisdictions that stated: "States that benefit most from the Chesapeake Bay recovery must do more." This principle was included in EPA's formal 2003 Allocation Document, but was later removed from the allocation methodology without prior notice or explanation. I would like to know when it was and why. I am aware that several requests have been made of EPA to produce documentation related to the decision to eliminate this principle from the methodology. To this point, EPA has not responded. I request that EPA include in the final record the minutes of each stakeholder or Agency staff meeting where this decision was discussed, including meetings held subsequent to the announcement of the decision, as well as any internal Agency communications relating to the decision or stakeholder reactions to it.

"I am deeply concerned that too much discretion in developing the draft TMDL allocations has been ceded to EPA Region 3, which primarily covers only the tidal jurisdictions. Region 3 has been the home of the Chesapeake Bay Program since that program was established in 1983. The Bay Program's original members were the states of Maryland, Virginia, and Pennsylvania, EPA, the Chesapeake Bay Commission (representing the state legislatures of those three states) and the District of Columbia. It wasn't until the year 2000, that the Bay Program sought the participation of New York, Delaware and West Virginia – the headwater states in the basin. These jurisdictions have been partners for a decade now, and yet the Program is still very much a Bay Program and not a Basin Program – focusing on restoration in the tidal states and ignoring the input of headwater states like New York. In fact, it is my understanding that on more than one occasion since becoming a member of the Bay Program, New York has been informed of decisions that were made at "stakeholder" meetings for which it had received neither an invitation to attend, nor prior notice that the meeting was being held. Appendix C of the draft TMDL contains a record of TMDL-related Chesapeake Bay Program Committee, Team and Workgroup, Partner and Stakeholder Meetings, and I request that the final record include documentation that New York received an invitation or notice for any of those meetings at which New York was not represented.

"Instead of requiring greater reductions of jurisdictions that will realize greater benefits from a

restored Bay, the draft TMDL requires New York to reduce its total phosphorus load by more than 34% of EPA's calculated 2009 baseline, while Maryland, a tidal state, is required to reduce its phosphorus load by only 18.89%. EPA's draft TMDL applauds Maryland for meeting its overall statewide allocations for phosphorous and nitrogen, but even if Maryland is successful in making these reductions by 2025, its per acre, per year delivered load of nitrogen will still be greater than New York's current edge of stream measurements – and only slightly less than New York's current average edge of stream load for phosphorous.

"As a result of New York's already high level of water quality, the additional requirements and regulations that EPA is seeking to impose through the TMDL will NOT generate the reductions necessary to meet the target load and which would be punitive to New York's farmers, taxpayers and communities.

"Even if funding were not a factor, the additional reductions required of New York by the draft TMDL are unattainable. However, I would also like to point out that EPA has chosen to award Bay Program funding to projects that achieve the 'biggest bang for the buck.' In the Fiscal Year 2010 request for proposals issued by Chesapeake Bay Program for the Development and Implementation of the Chesapeake Bay Innovative Nutrient and Sediment Reduction Program, the selection criteria acknowledge 'a need to foster a balance of cost-effectiveness with innovation to achieve better and accelerated methods for pollution reduction.' That principle of cost-effectiveness is applied to projects seeking funding for agriculture, wastewater treatment, and land management activities. However, the allocations in the draft TMDL require just the opposite – the highest percentage of marginal reduction from the state with the cleanest water. This directly contradicts the methodology of the TMDL load allocations, which ignored the marginal cost of further reductions and allocated load based on total nutrients contributed by basin, not by state, and in terms of total pounds, not pounds per acre. The result will be that little or no additional funding will be allocated to projects in New York because the state's already clean water means further nutrient reductions will be the least cost-effective of any states' projects.

"The allocations contained in the draft TMDL issued by EPA are neither attainable nor fairly allocated, with respect to headwater states like New York. For all of these reasons, EPA must amend the draft allocations to require greater reductions by the tidal states that will benefit the most from the improved health of the Bay, and to those jurisdictions that currently contribute the highest amount of annual, per acre, pollutant load to the Bay. Furthermore, EPA should credit prior pollutant reductions by New York against its reduction targets, instead of merely reducing New York's baseline load.

"Thank you again for the opportunity to speak at today's meeting. I look forward to working with EPA, the states and all of the stakeholders throughout the Bay watershed on this important matter."

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